

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARIO H. GOMEZ,

Plaintiff,

v.

KERN VALLEY STATE PRISON, *et al.*,

Defendants.

Case No. 1:24-cv-01144-EPG (PC)

ORDER FOR PLAINTIFF TO SHOW  
CAUSE WHY THIS ACTION SHOULD  
NOT BE DISMISSED WITHOUT  
PREJUDICE FOR FAILURE TO EXHAUST  
ADMINISTRATIVE REMEDIES

RESPONSE DUE IN THIRTY DAYS

Plaintiff Mario H. Gomez is a state prisoner proceeding *pro se* in this civil rights action. Plaintiff filed the operative complaint on September 26, 2024. (ECF No. 1). Plaintiff claims that correctional officers at Kern Valley State Prison failed to protect him from being stabbed by another inmate. (*Id.* at 11).<sup>1</sup>

It appears from the face of the Complaint that Plaintiff did not exhaust his administrative remedies before filing this action. (*Id.* at 2, 4). Accordingly, the Court will order Plaintiff to file a response within thirty days, explaining why this action should not be dismissed for failure to exhaust available administrative remedies. Such a dismissal would be without prejudice, so that Plaintiff may refile the action after exhausting administrative remedies, to the extent those remedies are still available to him. In the alternative, Plaintiff

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<sup>1</sup> Page numbers cited refer to the pagination indicated at the bottom of each page.

1 may file a notice of voluntary dismissal, in which case the Court will dismiss Plaintiff’s case  
2 without prejudice to Plaintiff refiling the complaint after exhausting administrative remedies.

### 3 I. LEGAL STANDARDS

4 Section 1997e(a) of the Prison Litigation Reform Act of 1995 (“PLRA”) provides that  
5 “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any  
6 other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until  
7 such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).

8 Prisoners are required to exhaust the available administrative remedies prior to filing  
9 suit. *Jones v. Bock*, 549 U.S. 199, 211 (2007); *McKinney v. Carey*, 311 F.3d 1198, 1199–1201  
10 (9th Cir. 2002) (*per curiam*). The exhaustion requirement applies to all prisoner suits relating to  
11 prison life. *Porter v. Nussle*, 534 U.S. 516, 532 (2002). Exhaustion is required regardless of the  
12 relief sought by the prisoner and regardless of the relief offered by the process, unless “the  
13 relevant administrative procedure lacks authority to provide any relief or to take any action  
14 whatsoever in response to a complaint.” *Booth v. Churner*, 532 U.S. 731, 736, 741 (2001); *Ross*  
15 *v. Blake*, 578 U.S. 632, 643 (2016).

16 “Under the PLRA, a grievance suffices if it alerts the prison to the nature of the wrong  
17 for which redress is sought. The grievance need not include legal terminology or legal theories,  
18 because [t]he primary purpose of a grievance is to alert the prison to a problem and facilitate its  
19 resolution, not to lay groundwork for litigation. The grievance process is only required to alert  
20 prison officials to a problem, not to provide personal notice to a particular official that he may  
21 be sued.” *Reyes*, 810 F.3d at 659 (alteration in original) (citations and internal quotation marks  
22 omitted).

23 As discussed in *Ross*, 578 U.S. at 639, there are no “special circumstances” exceptions  
24 to the exhaustion requirement. The one significant qualifier is that “the remedies must indeed  
25 be ‘available’ to the prisoner.” *Id.* The *Ross* Court described this qualification as follows:

26 [A]n administrative procedure is unavailable when (despite what  
27 regulations or guidance materials may promise) it operates as a simple  
28 dead end—with officers unable or consistently unwilling to provide

1 any relief to aggrieved inmates. *See* 532 U.S., at 736, 738, 121 S.Ct.  
2 1819. . . .

3 Next, an administrative scheme might be so opaque that it becomes,  
4 practically speaking, incapable of use. . . .

5 And finally, the same is true when prison administrators thwart  
6 inmates from taking advantage of a grievance process through  
7 machination, misrepresentation, or intimidation. . . . As all those courts  
8 have recognized, such interference with an inmate’s pursuit of relief  
9 renders the administrative process unavailable. And then, once again,  
10 § 1997e(a) poses no bar.

11 *Id.* at 643–44.

12 If the Court concludes that Plaintiff has failed to exhaust, the proper remedy is dismissal  
13 without prejudice of the portions of the complaint barred by section 1997e(a). *Jones*, 549 U.S.  
14 at 223–24; *Lira v. Herrera*, 427 F.3d 1164, 1175–76 (9th Cir. 2005).

15 When it is clear on the face of the complaint that a plaintiff failed to exhaust  
16 administrative remedies, dismissal is proper. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir.  
17 2014).

## 18 **II. ANALYSIS**

19 It appears from the face of the complaint that Plaintiff did not exhaust his available  
20 administrative remedies before filing this action. Plaintiff complains of conduct that occurred  
21 on August 19, 2024 (ECF No. 1 at 8). Plaintiff’s complaint was signed on September 23, 2024,  
22 and was filed on September 26, 2024. (*Id.* at 2, 4). Plaintiff’s complaint indicates that the  
23 grievance procedure is “still in process” and that he filed a grievance on August 26, 2024, with  
24 the final review due by November 28, 2024. (*Id.* at 2-3).

25 Accordingly, the Court will order Plaintiff to show cause why this action should not be  
26 dismissed for failure to exhaust available administrative remedies before filing this lawsuit. The  
27 Court notes that this dismissal would be without prejudice. Therefore, if Plaintiff exhausts his  
28 administrative remedies in the future, he could refile the complaint.

In response to this order, the Court also welcomes Plaintiff to file any documents he  
believes demonstrates that he has exhausted all available administrative remedies.

**III. CONCLUSION AND ORDER TO SHOW CAUSE**

Accordingly, **IT IS ORDERED** that,

1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show cause why this action should not be dismissed, without prejudice, for failure to exhaust available administrative remedies.
2. Alternatively, Plaintiff may file a notice of voluntary dismissal, in which case the Court will dismiss the case without prejudice such that Plaintiff may refile the case after exhausting administrative remedies.
3. A failure to comply with this order may result in the dismissal of Plaintiff's case.

IT IS SO ORDERED.

Dated: **October 4, 2024**

/s/ Eric P. Grogan  
UNITED STATES MAGISTRATE JUDGE